State of Oklahoma, County of Tulsa—ss.

W. Valjean Biddison, of lawful, age, on oath states that he is one of the attorneys and of counsel for the petitioner herein; that he has read the foregoing motion and has knowledge of the facts therein stated and is authorized to make this affidavit; that the allegations of fact set forth in said motion are true and correct; that he verifies this motion for the reason that the petitioner does not have personal knowledge of the allegations of fact therein set forth, the same being peculiarly within the knowledge of this affiant.

....,
W. VALJEAN BIDDISON.

Subscribed and sworn to before me this .... day of November, 1941.

....,
Lucille Bradley, Notary Public.

My commission expires: Jan. 15, 1944.

State of Oklahoma, County of Tulsa—ss.

J. T. Smith, of lawful age, on oath states that he is the petitioner above named; that he has read the foregoing motion and knows the contents thereof; that the allegations of fact therein set forth are true and correct as he is informed and verily believes.

....,
J. T. SMITH,

Subscribed and sworn to before me this .... day of November, 1941.

....,
Lucille Bradley, Notary Public.

My commission expires: Jan. 15, 1944.

EXHIBIT "A."

Supreme Court of the United States. No. ...., October Term, 1940.

J. T. Smith, Petitioner, vs. The Fourth National Bank of Tulsa.

DESIGNATION OF POINTS RELIED UPON.

1. The Supreme Court of the State of Oklahoma has denied petitioner the equal protection of the law of said state in violation of the Fourteenth Amendment to the Constitution of the United States by its opinion promulgated in this action as set forth in the record herein.

2. Said denial arises from and is affected by the failure and refusal of the Supreme Court of Oklahoma to apply as the law of this action in favor of appellant, the well established and uniform law of said state as announced by the previous decisions of said court, which, since their rendition, have stood as the law of said state applicable to all litigants alike in the courts of said state, none of which have been overruled or modified.

3. The Oklahoma statute permitting the filing of supplemental pleadings by its terms permits only the filing of supplemental matter which is in aid of a then existing cause of action.

4. The trial court acquired no jurisdiction of the subject-matter of a purported supplemental petition which is not in aid of a then existing cause of action and which makes no reference to the original cause of action, but on the contrary is the subject-matter of a new, separate and independent cause of action.

5. A pending cause of action on a promissory note becomes merged in and wholly extinguished by a judgment on said note whether the judgment be rendered in said pend-

ing action or in any court of competent jurisdiction in any state in the Union.

6. The Supreme Court of Oklahoma has continuously and consistently, by its prior decisions, announced as the law the propositions contained in numbers 3, 4 and 5, *supra*, and said decisions have stood and been recognized as the law of the State of Oklahoma applicable to all litigants in the courts of said state alike, none of said decisions having been overruled or modified.

7. The respondent has been given a judgment *in personam* and for the foreclosure of a mortgage predicated solely upon a purported amended or supplemental petition which was not supplemental to or in aid of a then existing cause of action, but which declared solely upon a foreign judgment rendered on the note sued upon in the action in which the alleged supplemental pleading was filed, which foreign judgment merged therein the original cause of action on said note, when the law of Oklahoma, as written by its legislative department and by the decisions of its judicial department, has uniformly and consistently declared:

(A) That a cause of action on a note is merged in a judgment taken thereon and the cause of action on the note thereby wholly extinguished;

(B) That a court of said state is without power to permit the filing as a supplemental petition of matters which are not supplemental to and in aid of a then existing cause of action;

(C) A court acquires no jurisdiction of the subject-matter of a supplemental petition filed in a pending action which it does not supplement nor aid, or to refuse to administer the law in favor of appellant in the same manner it does other citizens of the state;

thereby denying appellant the equal protection of the law;

8. The District Court of Creek County, Oklahoma, under Oklahoma statutes as uniformly construed by the Oklahoma Supreme Court in other cases, acquired no jurisdiction of the subject-matter set forth in said amended or supplemental petition so filed as such in said original action on said note, by which petition respondent sought relief *in personam* only by declaring upon said Kansas judgment rendered *in personam*, without any reference therein whatever to the original cause of action on said note.

9. The appellant is entitled to have the law of the State of Oklahoma applied to this action in the same way that said law is applied to other litigants.

Neal E. McNeill,
W. Valjean Biddison,
Attorneys and Solicitors for Appellant.

The undersigned attorneys and solicitors for The Fourth National Bank of Tulsa, respondent herein, hereby acknowledge service of the foregoing designation of points relied upon by delivery to them by J. T. Smith, petitioner herein, of a true copy thereof, this 14th day of June, 1941, and again on June 19th, 1941.

Chas. L. Yancey,
G. C. Spillers,
Kavanaugh Bush,
Attorneys and Solicitors for the
Fourth National Bank of Tulsa.

EXHIBIT "B."

Supreme Court of the United States. No. ....., October Term, 1940.

J. T. Smith, Petitioner, vs. The Fourth National Bank of Tulsa.

STIPULATION AS TO OMISSIONS FROM THE PRINTED RECORD.

It is hereby stipulated by and between the petitioner, J. T. Smith, by his undersigned attorneys, and the respondent, The Fourth National Bank of Tulsa, a national banking corporation, by its undersigned attorneys, that,

Whereas, the petitioner is applying to the Supreme Court of the United States for a writ of *certiorari* to review the decision of the Supreme Court of the State of Oklahoma in an appeal therein by petitioner, in which court he was plaintiff in error and the respondent was defendant in error, No. 29465, and,

Whereas, it is necessary for petitioner to print the record for the use of the above entitled court as required by Rule 38 of said court, which rule also requires the counsel for the parties to this proceeding to stipulate to omit from the printed record all matter not essential to a consideration of the questions presented by the petition for the writ;

Now, therefore, it is stipulated and agreed that petitioner need only print the following portions of the record of the Supreme Court of Oklahoma (it being agreed that all other portions thereof are unnecessary and not essential to a consideration of the questions presented by the petition for the writ, and same may be omitted), to-wit:

I. The first ten lines of the petition in error and the following numbered paragraphs thereof, to-wit: 1, 3, 4, 7, 10, 11, 12, 13, 15, 16, 17, 18, 39, 40, 41, 42 (Tr. 2 to 7).

II. The first and second causes of action in the original petition (Tr. 13 to 16) showing same filed in the District Court of Creek County, Oklahoma, May 18, 1933.

III. That portion of separate answer and cross petition of petitioner (showing same was filed June 6, 1934) comprising paragraph numbered 2 (Tr. 45) and the last paragraph immediately preceding the prayer (Tr. 49).

IV. Order allowing respondent to file amended petition (Tr. 52).

V. (a) That portion of the amended petition comprising the first and second causes of action (Tr. 55-59);

(b) "which petition was filed in the District Court of Creek County, Oklahoma, December 12, 1934, and which further sought the foreclosure of four other mortgages on lands in Oklahoma" (Tr. 59-69);

(c) The following portion of the authenticated judgment of the Kansas court constituting Exhibit A to said amended petition, to-wit:

1. Authenticated certificate (Tr. 70-71);

2. The first cause of action in the petition in the District Court of Chautauqua County, Kansas (Tr. 72-73);

3. The first paragraph of the journal entry (Tr. 96);

4. That portion of the prayer constituting the last paragraph of the page (Tr. 98);

5. Journal entry (Tr. 113-114).

VI. Motion to strike amended petition (showing same filed January 2, 1935, Tr. 117);

VII. Order sustaining motion to strike (Tr. 120);

VIII. Motion to reconsider action of the court in striking (Tr. 123 and the first 2 lines of Tr. 124) (showing same filed November 6, 1935);

IX. Order sustaining plaintiff's motion to reconsider (Tr. 131-132);

X. Motion to vacate order down to and including the signatures (Tr. 135-136) (showing same filed December 13, 1935);

XI. Journal entry appearing at Tr. 139;

XII. Demurrer to amended petition (Tr. 151-153) (showing same filed December 21, 1937);

XIII. Order overruling demurrer (Tr. 156);

XIV. Answer of J. T. Smith (Tr. 159-164) (showing same filed February 5, 1938);

XV. Reply (Tr. 168) (showing same filed February 13, 1938);

XVI. The following portion of the trial proceedings in the District Court of Creek County, Oklahoma, which appear at Tr. 170-182:

(a) Recitation (Tr. 170);

(b) Statement and motion by Mr. McNeill (Tr. 176);

(c) Reservation of ruling by the court (top of Tr. 178);

(d) Objection by McNeill to introduction of evidence and reservation of ruling by the court (Tr. 178);

(e) Evidence and ruling (Tr. 180) beginning with the first question and continuing to end of page;

(f) Offer of plaintiff's Exhibit 1 (Tr. 181), objection thereto, statement by Mr. Spillers, rule of the court and exception;

(g) Offer by Mr. Spillers of Exhibit 8, beginning Tr. 184 and ending with the ruling of the court and the exception by McNeill at the top of page 185;

(h) Demurrer to evidence by Mr. McNeill commencing at bottom of Tr. 186 and including the first 4 lines, page 187;

(i) The last 10 lines of Tr. 187;

(j) Stipulation (Tr. 188), beginning line 10 and continuing to end of page;

(k) Lines 10 to 17, both inclusive (Tr. 189);

XVII. Journal entry of judgment, District Court of Creek County, Oklahoma (Tr. 212 and the first 7 lines of 213) and the formal part of the judgment decreeing a personal judgment and establishing liens, beginning with line 12 (Tr. 215), and continuing to end of page;

XVIII. Opinion of the Supreme Court of Oklahoma (Tr. 243-249, both inclusive);

XIV. Petition for rehearing and Proposition VI of the index and authorities there cited (Tr. 252, 253, 254) (excluding the caption and other portions of the index, and the brief and argument in support of the petition);

XX. Order denying petition for rehearing (Tr. 268);

XXI. Application for leave to file second petition for rehearing (Tr. 269-271);

XXII. Order denying leave to file second petition for rehearing (Tr. 283);

XXIII. Order staying proceedings on the mandate (Tr. 284);

XXIV. Order staying proceedings on the mandate (Tr. 285);

XXV. Certificate of clerk of Supreme Court of Oklahoma to transcript of record (Tr. 286).

Neal E. McNeill,
W. Valjean Biddison,
Attorneys and Solicitors for Petitioner.

.....,
Attorneys and Solicitors for the Fourth National Bank of Tulsa.

The undersigned attorneys and solicitors for The Fourth National Bank of Tulsa, respondent herein, hereby acknowledge service of the foregoing instrument by delivery to them by J. T. Smith, petitioner herein, of a true copy thereof, this 14th day of June, 1941, and again on June 19th, 1941.

Charles L. Yancey,
G. C. Spillers,
Kavanaugh Bush,
Attorneys and Solicitors for The Fourth National Bank of Tulsa.

Office - Supreme Court, U. S.
FILED
NOV 29 1941
CHARLES ELMORE CROPLEY
CLERK

No. 271

In the Supreme Court of the United States

October Term, 1941.

J. T. SMITH, *Petitioner,*

vs.

THE FOURTH NATIONAL BANK OF TULSA, OKLAHOMA, *Respondent.*

Response to Motion to Tax Costs.

CHAS. L. YANCEY,
G. C. SPILLERS,
KAVANAUGH BUSH,
Beacon Building,
Tulsa, Oklahoma,
Counsel for Respondent.

IN THE SUPREME COURT OF THE UNITED STATES.
October Term, 1941.

No. 271

J. T. SMITH, *Petitioner,*

vs.

THE FOURTH NATIONAL BANK OF TULSA, OKLAHOMA, *Respondent.*

RESPONSE TO MOTION TO TAX COSTS.

Comes now the respondent, The Fourth National Bank of Tulsa, Oklahoma, and respectfully submits that the application to re-tax costs, designated "Motion to Tax Costs," should be denied upon the following grounds:

(1) The application for writ of certiorari was denied, and under title 28, U. S. C. A., Sec. 352, which provides:

> "There shall be taxed against the losing party in each and every cause pending in the Supreme Court the cost of printing the record in such case except when the judgment is against the United States,"

the costs were properly taxed against the appellant.

(2) The application for writ of certiorari was denied on the 13th day of October, 1941, and under Rule 34 of this court an order was entered to that effect and counsel of record in the court below were notified promptly by the clerk of this court. This court no longer has jurisdiction of this case.

(3) Rule 13, Sec. 9, of this court provides:

> "When the record is filed, or within fifteen days thereafter, the appellant shall file with the clerk a definite statement of the points on which he intends to rely and a designation of the parts of the record which he thinks necessary for the consideration thereof or a designation of those parts considered unnecessary, whichever is more convenient, with proof of service of the same on the adverse party. The adverse party, within ten days after service of the statement and designation required to be filed by appellant may designate in writing, filed with the clerk, additional parts of the record which he thinks material; and, if he shall not do so, he shall be held to have consented to a hearing on the parts designated by the appellant. * * * If either party shall have caused unnecessary parts of the record to be printed, such order as to cost may be made as the court shall think proper."

The facts are that the respondent made no suggestions as to what the record should contain and hence, under the above rule, consented to submit the cause on the record prepared and presented by the petitioner. Attorneys for respondent simply accepted service of the record presented by petitioner and sat mute. Petitioner had a right to present his case on whatever record he saw fit. This he did, and, having failed in this court, must of necessity pay the cost of filing the application and printing the record.

Counsel for respondent specifically deny that they caused petitioner to print any part of the record in this cause. Petitioner was the moving party and took such steps as he and his counsel deemed proper.

Respondent attaches hereto affidavits of two of its attorneys, Chas. L. Yancey and G. C. Spillers, marks the same

Exhibits "A" and "B," respectively, and makes the same a part hereof.

Respondent respectfully submits that the application of petitioner to tax any part of the costs herein against respondent is wholly without merit and should be denied.

CHAS. L. YANCEY,
G. C. SPILLERS,
KAVANAUGH BUSH,
Beacon Building,
Tulsa, Oklahoma,
Counsel for Respondent.

"EXHIBIT A."

AFFIDAVIT.

State of Oklahoma, County of Tulsa—ss.

Chas. L. Yancey, of lawful age, being first duly sworn, on oath states:

That he is one of the attorneys for respondent referred to in motion to tax costs herein.

Affiant further states that Valjean Biddison, of counsel for appellant in this cause, suggested to him that it was not necessary from appellant's standpoint to print the entire record in this case, and suggested a stipulation, setting out what he thought were the salient points. This affiant thereupon advised said Valjean Biddison that he could print any part or all of the record he saw fit, and further advised him that respondent would not enter into such a stipulation as he suggested, for the reason that it appeared to be meaningless and wholly unnecessary; that if the case went to the Supreme Court, he thought the entire record should go, but made no requests or agreements concerning the record.

Further affiant saith naught.

CHAS. L. YANCEY.

Subscribed and sworn to before me this 21st day of November, 1941.

(Seal) Frances Thompson, Notary Public.

My commission expires: January 26, 1944.

"EXHIBIT B."

AFFIDAVIT.

State of Oklahoma, County of Tulsa—ss.

G. C. Spillers, being first duly sworn on oath deposes and says:

That he is one of the attorneys for respondent referred to in the motion to tax costs herein.

Affiant further states that when W. Valjean Biddison, one of the attorneys for the petitioner J. T. Smith, served certain papers on affiant as a member of the firm of Yancey, Spillers & Bush, attorneys for the respondent herein, affiant made no suggestions of whatsoever nature or kind as to what the record which petitioner proposed to present to this court should contain, but simply accepted the service of the documents presented without comment.

G. C. SPILLERS.

Subscribed and sworn to before me this 20 day of November, 1941.

(Seal) Frances Thompson, Notary Public.

My commission expires: Jan. 26, 1944.